

2010 APR 26 PM 1:05

JEANNE HICKS, CLERK

BY: V. Adams ✓

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	No. P1300CR20081339
)	
Plaintiff,)	Div. 6
)	
vs.)	REPONSE TO STATE'S MOTION
)	IN LIMINE TO PRECLUDE
STEVEN CARROLL DEMOCKER,)	KNAPP EVIDENCE
)	
Defendant.)	
)	
)	
)	(Oral Argument Requested)

Defendant Steven DeMocker, by and through undersigned counsel, files this Response to the State's Motion *in limine* to Preclude Character Evidence (sic) of James R. Knapp Pursuant to Rules 401, 402 and 404, Arizona Rules Of Evidence, filed on April 14, 2010. This Response is based upon Mr. DeMocker's rights to due process, equal protection, counsel, a fair trial and appeal, freedom from double jeopardy, and

1 freedom from cruel and unusual punishment under the Fourth, Fifth, Sixth, Eighth and
2 Fourteenth Amendments to the United States Constitution and under the Arizona
3 Constitution, Article 2, Sections 1, 2, 3, 4, 8, 10, 11, 13, 15, 24, 32 and 33, as well as the
4 authorities cited in the following Memorandum of Points and Authorities.
5

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 Rules 401, 402, and 403, Arizona Rules of Evidence, set forth the proper test for
8 determining the admissibility of third-party culpability evidence. *State v. Gibson*, 202
9 Ariz. 321, 324 ¶ 19, 44 P.3d 1001, 1004 (2002). “Th[e] standard of relevancy [under
10 Rule 401] is not particularly high.” *State v. Oliver*, 158 Ariz. 22, 28, 760 P.2d 1071,
11 1077 (1988). When considering admissibility of evidence of third-party guilt, “[t]he
12 proper focus in determining relevancy is the effect the evidence has upon the defendant’s
13 culpability. To be relevant, the evidence need only tend to create a reasonable doubt as
14 to the defendant’s guilt.” *Gibson*, 202 Ariz. at 324 ¶ 16, 44 P.3d at 1004. *See* 1A
15 Wigmore on Evidence § 142, at 1731 (Tillers Revision 1983) (“Of the other kinds of
16 evidence [besides those specifically discussed] indicating a third person as the doer of
17 the act, it can only be said that the inclination should always be to admit any one of
18 them, unless totally without probative suggestion.”). *See also Johnson v. United States*,
19 552 A.2d 513, 517 (D.C. 1989) (holding that proffered evidence need not prove
20 another’s guilt; rather “the evidence need only tend to create a reasonable doubt that the
21 defendant committed the offense”); *State v. LeClair*, 425 A.2d 182, 186 (Me. 1981)
22 (“Especially where the state’s case is based on circumstantial evidence, the court should
23 allow the defendant ‘wide latitude’ to present all the evidence relevant to his defense,
24 unhampered by piecemeal rulings on admissibility.”) (citation omitted).

25 In essence, this latest attempt to keep Mr. Knapp out of this case is a motion
26 aimed at whether enough evidence exists to allow Mr. DeMocker to point to Mr. Knapp
27
28

1 as a possible killer. Based upon a defense interview of the State's own cell tower expert
2 just conducted on April 23, 2010, and the depositions of Mr. Knapp's former wife and
3 his young son taken on April 21, a scenario has developed in which Mr. Knapp would
4 have had an opportunity to kill Carol Kennedy and cover his tracks with the alibi
5 evidence previously submitted. In short, a circumstantial case can be demonstrated, no
6 weaker than that offered against Mr. DeMocker, that Knapp was the real killer who
7 concocted an elaborate alibi to attempt to hide his guilt. That case is based upon a
8 timeline that would allow Mr. Knapp to leave his son alone just long enough to go to
9 Bridle path, kill Carol, check his voice mail on the way back, and return to his former
10 wife's home just before she arrived. The Gibson burden is thus met here.

11 Furthermore, the State is well aware of yet another scenario involving a jailhouse
12 conversation and an anonymous email sent to Mr. Sears and Mr. Butner in June, 2009, in
13 which a detailed description of how and why the murder was committed and how Mr.
14 Knapp actually brought the crime down on Carol through his involvement in a criminal
15 prescription drug enterprise in Phoenix. That account does not point to Knapp as the
16 murderer, but requires some evidence of his mental state, his addiction to prescription
17 drugs, and his desperate search for money in the months leading up to Carol's death in
18 order for the jury to understand this account of the murder. The State has carefully
19 investigated this matter and has concluded that it cannot identify the source of the
20 information. Defendant submits, however, that the State cannot disprove any part of this
21 story, and that it remains a viable alternative theory in this case.

22 CONCLUSION

23 Despite the State's repeated efforts to keep it out, Mr. Knapp and his role in this case
24 should be presented to this jury. As the State often notes about Mr. DeMocker, Mr.
25 Knapp is another person who had motive, opportunity and the means to kill Carol
26 Kennedy. His behavior before and after the murder and his mysterious death six months
27

1 later are all part of that story. His so-called "iron-clad" alibi has holes in it even
2 according to the State's own witnesses, and if the anonymous messages are true, he had a
3 role (albeit a very different one) in what happened on July 2, 2008.

4 RESPECTFULLY SUBMITTED this 26th day of April, 2010.

5
6 By: 

7 John M. Sears
8 P.O. Box 4080
9 Prescott, Arizona 86302

10 OSBORN MALEDON, P.A.
11 Larry A. Hammond
12 Anne M. Chapman
13 2929 N. Central Avenue, Suite 2100
14 Phoenix, Arizona 85012-2793

15 Attorneys for Defendant

16 **ORIGINAL** of the foregoing hand delivered for
17 filing this 26th day of April, 2010, with:

18 Jeanne Hicks
19 Clerk of the Court
20 Yavapai County Superior Court
21 120 S. Cortez
22 Prescott, AZ 86303

23 **COPIES** of the foregoing hand delivered this
24 this 26th day of April, 2010, to:

25 The Hon. Thomas B. Lindberg
26 Judge of the Superior Court
27 Division Six
28 120 S. Cortez
Prescott, AZ 86303

Joseph C. Butner, Esq.
Prescott Courthouse basket

